

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE J.B.KOSHY

&

THE HONOURABLE MRS. JUSTICE K.HEMA

MONDAY, THE 19TH NOVEMBER 2007 / 28TH KARTHIKA 1929

MFA.No. 1540 of 2001()

OPMV.1781/1994 of MOTOR ACCIDENT CLAIMS TRIBUNAL, IRINJALAKUDA
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APPELLANT:/PETITIONER:

T.T.RAPPAKUTTY S/O. THOMAS, AGED 50,
THOUNDASSERY HOUSE,
LOKAMALESWARAM,
KODUNGALLOOR.

BY ADV. SRI.T.N.MANOJ
SRI.DINESH R.SHENOY

RESPONDENTS:

1. O.K.SIVARAMAN, S/O.O.K.KRISHNAN,
OLIPARAMBIL HOUSE, P.O.KAVILKADAVU.
2. THE MANAGER, UNITED INDIA INSURANCE CO.
BRANCH, ORISON COMPLEX,
WADAKKANCHERRY ROAD,
KUNNAMKULAM.
3. A.K.RAMAKRISHNAN, S/O.ALINGAPARAMBIL
KRISHNAN, PULLAT SOUTH P.O. PULLAT,
KODUNGALLOOR.

BY ADV. SRI.MATHEWS J.NEDUMPARA

THIS MISC. FIRST APPEAL HAVING BEEN FINALLY HEARD
ON 19/11/2007, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

J.B. KOSHY & K. HEMA, JJ.

M.F.A. No. 1540 of 2001

Dated this 19th day of November, 2007

JUDGMENT

Koshy,J:

Appellant-claimant suffered injuries in a motor accident on 10.5.1994. He claimed a total compensation of Rs.4,28,880/-. The Tribunal has awarded only Rs.92,300/-. The Tribunal found that the accident occurred due to the negligence of the driver of the vehicle owned by the first respondent and insured by the 2nd respondent Insurance company. Only quantum of compensation is disputed in this appeal. Hence, we are considering that aspect only in this appeal.

2. Exhibit A2 is the wound certificate. Ext.A6 is the disability certificate. Ext.A7 is the discharge certificate. Ext.A8 is the disability certificate issued by Dr.A.V.Babukuttan, Orthopaedic Surgeon and Civil Surgeon, District Hospital, Thrissur. Tribunal considered the injuries sustained by him as follows:

“ Ext.A2 is the wound certificate issued from the Modern Hospital, Kodungallur. The wound certificate shows that the petitioner sustained compound fracture to the right humerus. He was treated as inpatient in the hospital

from 10.5.94 to 27.5.93 for 17 days. Ex.A6 is the disability certificate. It shows that the petitioner was treated by wound debridement, open reduction and internal fixation. He was again reviewed on 24.6.94 and mobilisation to the right elbow was started. On 2.8.94 the petitioner complained, pain and swelling to the right forearm and elbow. X-ray examination revealed that implant was loosening suggestive of infection. He was started on antibiotics and analgesics. The petitioner was reviewed on 1.4.95. He was unable to work as labourer. He was found to be unable to lift his hand above the head. He has difficulty to lift weight and to eat due to partial loss of elbow movements. Ext.A7 is the discharge certificate from the Modern Hospital. The Orthopaedic Surgeon issued the disability certificate certifying that the person has 29% disability. The Doctor found that the partial ankylosis of the right elbow joint with limitation of flexion upto 90 degree. There is wasting of Biceps triceps and brachio radiatis on the right side. An extensive scar on the anterior aspect of right arm extending towards the elbow. The contour of the right elbow is lost. There was mild varus deformity right elbow. There is partial ankylosis of the right shoulder joint with limitation of abduction above 110 degree and rotations 30 degree. Pinch and grip strength reduced to 30%. Sensory disturbances over the ulnar aspect of medial three fingers and radial side of thumb right. Muscle strength wrist and elbow right is of grade 4. There was delayed union of the fracture with anterior angulation of the fractured fragments. He has difficulty to eat food. Considering the above deformities the Doctor has certified that he has 29% disability."

3. Ext.A13 is the disability certificate issued by Dr.T.I. George, M.S. (Orth). That was issued on 14.2.2000 showing the percentage of disability. In the above certificate it was certified that permanent partial disability was 29.01% for total body, but the Tribunal accepted only 25% disability. Doctor also noted that even after 6 years of the

accident he had the following deformities:

- "1. Limitation of Rt shoulder movement by restricted abduction, external rotation etc.

Net loss of movement at Rt shoulder compared to opposite shoulder - 25%
2. Limitation of Rt elbow movement of flexion and net loss of movement at Rt elbow – 50%
3. Limitation of rotation of Rt forearm. Net loss of rotation = 20%
4. Weakness Rt shoulder – Objectively loss of muscle power at Rt shoulder loss by two grade.
5. Weakness Rt elbow – Objectively loss of muscle power at Rt elbow by two grade.
6. Loss of co-ordinated movement Rt upper limb evidenced by gross deformity and abnormal mobility at fracture site- loss of co-ordination estimated at 30%
7. Radiologically implant failure Rt humerus and unsound union at fracture site with deformity."

4. We are of the opinion that no interference is required in the assessment of disability by the Tribunal considering the nature of injuries. The Tribunal has taken Rs.1200/- as the monthly income. Claimant was an RCC worker. Ext.A9 labour certificate issued by his employer, Mini Concrete Works, Kodungallur shows that he was paid Rs.120/- as daily wages. Ext.10 certificate of the Village Officer shows that the claimant was getting annual income of Rs.36,000/-.

But, according to the Tribunal, he was getting an average monthly income of Rs.1200/-. He was 42 years old at the time of accident and he was maintaining a family. Even a non-earning person, the notional monthly income is Rs.1250/- as per Second Schedule. We are of the view that considering the wages of the workers in Kerala at least he will get Rs.100/- per day and a worker can get at least 24 to 26 days work as there is demand of RCC workers. Minimum wages payable for an R.C.C. Worker is more than Rs.100/- per day during the relevant time. Therefore, Rs.2400/- can be fixed as the monthly income. The Tribunal has taken 15 as the multiplier taking guidance from second schedule. We see no ground to increase the multiplier considering the age of the claimant. Hence, compensation payable for 25% disability is 1,08,000/-. The Tribunal granted only Rs.54,000/- as compensation for disability and loss of earning power. Therefore, claimants are entitled to Rs.54,000/- more on the heads of disability and loss of earning power. The Tribunal found that he was under treatment for six months and six months' loss of actual earning was awarded taking Rs.1200/- as monthly income. Since we have taken Rs.2400/- as the monthly income, claimant is entitled to Rs.7200/- more for loss of actual earning during the period of treatment. It is submitted that towards loss of amenities, discomforts suffered and

inconvenience caused only Rs.5000/- was awarded and compensation awarded under all other heads are inadequate, considering the total compensation awarded, no enhancement is required in other heads. Hence, additional amount of Rs.61,200/- should be deposited by the 2nd respondent Insurance Company with 7.5% interest from the date of application its deposit over and above the decreed amount by the Tribunal. Appellant is also entitled to proportionate cost in the proceedings before the Tribunal. On deposit of the amount, appellant is entitled to withdraw the same. Award is modified accordingly.

Appeal is partly allowed.

Sd/-

J.B. KOSHY, JUDGE.

Sd/-

K. HEMA, JUDGE.

Krs.

J.B. KOSHY & K. HEMA, JJ.

M.F.A. No. 1540 of 2001

Dated this 19th day of November, 2007

JUDGMENT